

**97TH GENERAL ASSEMBLY****State of Illinois****2011 and 2012****SB2894**

Introduced 2/1/2012, by Sen. Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

See Index

Amends the Guardianship and Advocacy Act. Provides that, in a case in which a court appoints the State Guardian, the court shall indicate in the order the reasons that the State Guardian appointment, rather than the appointment of another interested party, is required. Provides that the State Guardian shall not be appointed as guardian for a person whose primary diagnosis is mental illness. Provides that each ward of the State Guardian who was adjudicated disabled before the effective date of this amendatory Act and has a primary diagnosis of mental illness shall be the subject of a review hearing and shall be considered eligible for restoration of rights unless evidence demonstrates, by a clear and convincing standard, that guardianship is still required for the ward and that the State Guardian is the only available and suitable guardian. Amends the Clerks of Courts Act to authorize guardianship and advocacy operation fees. Exempts certain parties from these fees. Makes other changes. Amends the Probate Act of 1975. Provides that an order appointing a guardian shall implement the least restrictive alternative, maximize the disabled person's autonomy, and exercise authority over the disabled person only as necessary. Provides that in counties having a population of 1,000,000 or less, in which there is no currently serving public guardian or in which there is a public guardian serving under an expired term of office, the Governor shall, within 90 days after the effective date of this amendatory Act, appoint the Office of State guardian the public guardian. Subsequently, in counties having a population of 1,000,000 or less and upon the expiration of the public guardian's term, the State guardian shall be appointed the public guardian.

LRB097 17188 JLS 62388 b

FISCAL NOTE ACT
MAY APPLY**A BILL FOR**

1 AN ACT concerning guardians.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Guardianship and Advocacy Act is amended by
5 changing Sections 31 and 32 as follows:

6 (20 ILCS 3955/31) (from Ch. 91 1/2, par. 731)

7 Sec. 31. Appointment; availability of State Guardian;
8 available private guardian. The State Guardian shall not be
9 appointed if another suitable person is available and willing
10 to accept the guardianship appointment. In all cases where a
11 court appoints the State Guardian, the court shall indicate in
12 the order appointing the guardian as a finding of fact that no
13 other suitable and willing person could be found to accept the
14 guardianship appointment. On and after the effective date of
15 this amendatory Act of the 97th General Assembly, the court
16 shall also indicate in the order, as a finding of fact, the
17 reasons that the State Guardian appointment, rather than the
18 appointment of another interested party, is required. This
19 requirement shall be waived where the Office of State Guardian
20 petitions for its own appointment as guardian.

21 (Source: P.A. 89-396, eff. 8-20-95.)

22 (20 ILCS 3955/32) (from Ch. 91 1/2, par. 732)

1 Sec. 32. Powers and duties of State Guardian; service
2 limitation; review hearings.

3 (a) The State Guardian shall have the same powers and
4 duties as a private guardian as provided in Article XIa of the
5 Probate Act of 1975, approved August 7, 1975. The State
6 Guardian shall not provide direct residential services to its
7 wards. The State Guardian shall visit and consult with its
8 wards at least four times a year for as long as the
9 guardianship continues. On and after the effective date of this
10 amendatory Act of the 97th General Assembly, the State Guardian
11 shall not be appointed as guardian for a person whose primary
12 diagnosis is mental illness within the meaning of Section 11a-2
13 of the Probate Act of 1975.

14 (b) Each ward of the State Guardian who was adjudicated
15 disabled before the effective date of this amendatory Act of
16 the 97th General Assembly and has a primary diagnosis of mental
17 illness shall be the subject of a review hearing in either the
18 county in which the case was established or in which the ward
19 now resides. The court shall appoint a guardian ad litem or
20 advocate to represent the interests of the ward at this
21 hearing, and the State Guardian shall be the petitioner. As
22 soon as practical after the effective date of this amendatory
23 Act of the 97th General Assembly, the State Guardian shall
24 petition under this Section. At the hearing, a ward with a
25 primary diagnosis of mental illness shall be considered
26 eligible for restoration of rights unless evidence

1 demonstrates, by a clear and convincing standard, that
2 guardianship is still required for the ward with mental illness
3 and that the State Guardian is the only available and suitable
4 guardian. The court shall determine the appropriateness of
5 restoration of the ward's legal rights and the termination of
6 the adjudication under Section 11a-20 of the Probate Act of
7 1975. If the court determines that guardianship is still
8 required, it shall consider whether another party may be
9 suitable to serve as guardian. If the court continues the
10 guardianship with the State Guardian, the court shall enter
11 findings of fact in accordance with Section 31 of this Act. The
12 court may also determine that further review under this Section
13 is no longer required.

14 (Source: P.A. 80-1416.)

15 Section 10. The Clerks of Courts Act is amended by adding
16 Section 27.3f as follows:

17 (705 ILCS 105/27.3f new)

18 Sec. 27.3f. Guardianship and advocacy operations fee.

19 (a) As used in this Section, "guardianship and advocacy"
20 means the guardianship and advocacy services provided by the
21 Guardianship and Advocacy Commission and defined in the
22 Guardianship and Advocacy Act. Viable public guardianship and
23 advocacy programs, including the public guardianship programs
24 created and supervised in probate proceedings in the Illinois

1 courts, are essential to the administration of justice and
2 ensure that incapacitated persons and their estates are
3 protected. To defray the expense of maintaining and operating
4 the divisions and programs of the Guardianship and Advocacy
5 Commission and to support viable guardianship and advocacy
6 programs throughout Illinois, each circuit court clerk shall
7 charge and collect a fee on all matters filed in probate cases
8 in accordance with this Section, but no fees shall be assessed
9 against the State Guardian, any public guardian, or any State's
10 Attorney.

11 (b) The clerk is entitled to receive the fees specified in
12 this Section, which shall be paid in advance, and managed by
13 the clerk as set out in paragraph (4), except that, for good
14 cause shown, the court may suspend, reduce, or release the
15 costs payable under this Section:

16 (1) For administration of the estate of a decedent
17 (whether testate or intestate) or of a ward, or of a
18 missing person, a fee of \$150, plus the fees specified in
19 paragraph (3), except:

20 (A) When the value of the real and personal
21 property does not exceed \$15,000, the fee shall be \$40.

22 (B) When (i) proof of heirship alone is made, (ii)
23 a domestic or foreign will is admitted to probate
24 without administration (including proof of heirship),
25 or (iii) letters of office are issued for a particular
26 purpose without administration of the estate, the fee

1 shall be \$40.

2 (C) For filing a petition to sell real estate, \$50.

3 (2) For administration of the estate of a ward that
4 results in the appointment of the Office of State Guardian,
5 the fee shall be \$250, plus the fees specified in paragraph
6 (3).

7 (3) In addition to the fees payable under paragraphs
8 (1) or (2) of this subsection (b), the following fees are
9 payable:

10 (A) For each account (other than one final account)
11 filed in the estate of a decedent, or ward, the fee
12 shall be \$25.

13 (B) For filing a claim in an estate when the amount
14 claimed is \$150 or more but less than \$500, the fee
15 shall be \$25; when the amount claimed is \$500 or more
16 but less than \$10,000, the fee shall be \$40; when the
17 amount claimed is \$10,000 or more, the fee shall be
18 \$60; provided that the court in allowing a claim may
19 add to the amount allowed the filing fee paid by the
20 claimant.

21 (C) For filing in an estate a claim, petition, or
22 supplemental proceeding based upon an action seeking
23 equitable relief including the construction or contest
24 of a will, enforcement of a contract to make a will,
25 and proceedings involving a testamentary trust or the
26 appointment of a testamentary trustee, the fee shall be

1 \$60.

2 (D) For filing in an estate (i) the appearance of
3 any person for the purpose of consent or (ii) the
4 appearance of an executor, administrator,
5 administrator to collect, guardian, guardian ad litem,
6 or special administrator, no fee.

7 (E) Except as provided in subparagraph (D) of this
8 paragraph (3), for filing the appearance of any person
9 or persons, the fee shall be \$30.

10 (F) For each jury demand, the fee shall be \$137.50.

11 (G) For disposition of the collection of a judgment
12 or settlement of an action or claim for wrongful death
13 of a decedent or of any cause of action of a ward, when
14 there is no other administration of the estate, the fee
15 shall be \$50, less any amount paid under subparagraph
16 (B) of paragraph (1) or subparagraph (B) of paragraph
17 (3) except that if the amount involved does not exceed
18 \$5,000, the fee, including any amount paid under
19 subparagraph (B) of paragraph (1) or subparagraph (B)
20 of paragraph (3), shall be \$20.

21 (4) The guardianship and advocacy operations fees, as
22 outlined in this Section, shall be in addition to all other
23 fees and charges and assessable as costs and shall not be
24 subject to disbursement under Section 27.5 or 27.6 of this
25 Act. Twenty percent of the fee shall be retained by the
26 clerk to defray costs of collection and 80% of the fee

1 shall be disbursed within 60 days after receipt by the
2 circuit clerk to the State Treasurer for deposit by the
3 State Treasurer into the Guardianship and Advocacy Fund.

4 Section 15. The Probate Act of 1975 is amended by changing
5 Sections 11a-12, 13-1, and 13-5 and by adding Section 13-1.3 as
6 follows:

7 (755 ILCS 5/11a-12) (from Ch. 110 1/2, par. 11a-12)

8 Sec. 11a-12. Order of appointment.)

9 (a) If basis for the appointment of a guardian as specified
10 in Section 11a-3 is not found, the court shall dismiss the
11 petition. If a basis for the appointment of a guardian is
12 found, the court shall issue orders that implement the least
13 restrictive alternative, maximize the alleged disabled
14 person's right to self-determination and autonomy, and
15 exercise authority only to the extent necessitated by the
16 alleged disabled person's limitations. In determining the
17 least restrictive alternative, the court shall consider
18 options that allow the ward to live, learn, and work in a
19 setting that places as few limits as possible on the ward's
20 rights and personal freedom as appropriate to meet the needs of
21 the ward.

22 (b) If the respondent is adjudged to be disabled and to
23 lack some but not all of the ~~be totally without~~ capacity as
24 specified in Section 11a-3, and if the court finds that ~~limited~~

1 guardianship is necessary for the protection of ~~will not~~
2 ~~provide sufficient protection for~~ the disabled person, his or
3 her estate, or both, the court shall appoint a limited ~~plenary~~
4 guardian of ~~for~~ the respondent's person or estate or both. The
5 court shall enter a written order stating the factual basis for
6 its findings and specifying the duties and powers of the
7 guardian and the legal disabilities to which the respondent is
8 subject. Where guardianship is found to be necessary, the court
9 shall ensure that limited guardianship is strongly favored and
10 that plenary guardianship is applied only as a last resort,
11 consistent with subsection (c).

12 (c) If the respondent is adjudged to be disabled and to be
13 totally without ~~lack some but not all of the~~ capacity as
14 specified in Section 11a-3, and if the court finds that limited
15 guardianship will not provide sufficient ~~is necessary for the~~
16 protection for ~~of~~ the disabled person, his or her estate, or
17 both, the court shall appoint a plenary ~~limited~~ guardian for ~~of~~
18 the respondent's person or estate or both. The court shall
19 enter a written order stating the factual basis for its
20 findings ~~and specifying the duties and powers of the guardian~~
21 ~~and the legal disabilities to which the respondent is subject.~~

22 (d) The selection of the guardian shall be in the
23 discretion of the court, which shall give due consideration to
24 the preference of the disabled person as to a guardian, as well
25 as the qualifications of the proposed guardian, in making its
26 appointment.

1 (Source: P.A. 89-396, eff. 8-20-95.)

2 (755 ILCS 5/13-1) (from Ch. 110 1/2, par. 13-1)

3 Sec. 13-1. Appointment and term of public administrator and
4 public guardian.) Except as provided in Sections ~~Section~~ 13-1.1
5 and 13-1.3, before the first Monday of December, 1977 and every
6 4 years thereafter, and as often as vacancies occur, the
7 Governor, by and with the advice and consent of the Senate,
8 shall appoint in each county a suitable person to serve as
9 public administrator and a suitable person to serve as public
10 guardian of the county. The Governor may appoint the same
11 person to serve as public guardian and public administrator in
12 one or more counties. In considering the number of counties of
13 service for any prospective public guardian or public
14 administrator the Governor may consider the population of the
15 county and the ability of the prospective public guardian or
16 public administrator to travel to multiple counties and manage
17 estates in multiple counties. Each person so appointed holds
18 his office for 4 years from the first Monday of December, 1977
19 and every 4 years thereafter or until his successor is
20 appointed and qualified.

21 (Source: P.A. 96-752, eff. 1-1-10.)

22 (755 ILCS 5/13-1.3 new)

23 Sec. 13-1.3. Transition to Office of State Guardian. In
24 counties having a population of 1,000,000 or less, and in which

1 there is no currently serving public guardian or in which there
2 is a public guardian serving under an expired term of office,
3 the Governor shall, within 90 days after the effective date of
4 this amendatory Act of the 97th General Assembly, appoint the
5 Office of State Guardian the public guardian. Subsequently, in
6 counties having a population of 1,000,000 or less and upon the
7 expiration of the public guardian's term, the State Guardian
8 shall be appointed the public guardian. The State Guardian
9 appointed as public guardian shall serve continuously and not
10 be subject to 4 year terms of appointment. In cases in which
11 the State Guardian serves as public guardian, the State
12 Guardian shall assume only the duties described in Sections 30
13 and 32 of the Guardianship and Advocacy Act and shall be
14 otherwise subject to the provisions of the Guardianship and
15 Advocacy Act and not this Article XIII.

16 (755 ILCS 5/13-5) (from Ch. 110 1/2, par. 13-5)
17 Sec. 13-5. Powers and duties of public guardian.) The court
18 may appoint the public guardian as the guardian of any disabled
19 adult who is in need of a public guardian and whose estate
20 exceeds \$100,000 in counties having a population in excess of
21 1,000,000 ~~\$25,000~~. When a disabled adult who has a smaller
22 estate is in need of guardianship services in counties having a
23 population in excess of 1,000,000, the court shall appoint the
24 State guardian pursuant to Section 30 of the Guardianship and
25 Advocacy Act. If the public guardian is appointed guardian of a

1 disabled adult and the estate of the disabled adult is
2 thereafter reduced to less than \$100,000 ~~\$25,000~~, the court
3 may, upon the petition of the public guardian and the approval
4 by the court of a final accounting of the disabled adult's
5 estate, discharge the public guardian and transfer the
6 guardianship to the State guardian. The public guardian shall
7 serve not less than 14 days' notice to the State guardian of
8 the hearing date regarding the transfer. When appointed by the
9 court, the public guardian has the same powers and duties as
10 other guardians appointed under this Act, with the following
11 additions and modifications:

12 (a) The public guardian shall monitor the ward and his care
13 and progress on a continuous basis. Monitoring shall at minimum
14 consist of monthly contact with the ward, and the receipt of
15 periodic reports from all individuals and agencies, public or
16 private, providing care or related services to the ward.

17 (b) Placement of a ward outside of the ward's home may be
18 made only after the public guardian or his representative has
19 visited the facility in which placement is proposed.

20 (c) The public guardian shall prepare an inventory of the
21 ward's belongings and assets and shall maintain insurance on
22 all of the ward's real and personal property. No personal
23 property shall be removed from the ward's possession except for
24 storage pending final placement or for liquidation in
25 accordance with this Act.

26 (d) The public guardian shall make no substantial

1 distribution of the ward's estate without a court order.

2 (e) The public guardian may liquidate assets of the ward to
3 pay for the costs of the ward's care and for storage of the
4 ward's personal property only after notice of such pending
5 action is given to all potential heirs at law, unless notice is
6 waived by the court; provided, however, that a person who has
7 been so notified may elect to pay for care or storage or to pay
8 fair market value of the asset or assets sought to be sold in
9 lieu of liquidation.

10 (f) Real property of the ward may be sold at fair market
11 value after an appraisal of the property has been made by a
12 licensed appraiser; provided, however, that the ward's
13 residence may be sold only if the court finds that the ward is
14 not likely to be able to return home at a future date.

15 (g) The public guardian shall, at such intervals as the
16 court may direct, submit to the court an affidavit setting
17 forth in detail the services he has provided for the benefit of
18 the ward.

19 (h) Upon the death of the ward, the public guardian shall
20 turn over to the court-appointed administrator all of the
21 ward's assets and an account of his receipt and administration
22 of the ward's property. A guardian ad litem shall be appointed
23 for an accounting when the estate exceeds the amount set in
24 Section 25-1 of this Act for administration of small estates.

25 (i)(1) On petition of any person who appears to have an
26 interest in the estate, the court by temporary order may

1 restrain the public guardian from performing specified acts of
2 administration, disbursement or distribution, or from exercise
3 of any powers or discharge of any duties of his office, or make
4 any other order to secure proper performance of his duty, if it
5 appears to the court that the public guardian might otherwise
6 take some action contrary to the best interests of the ward.
7 Persons with whom the public guardian may transact business may
8 be made parties.

9 (2) The matter shall be set for hearing within 10 days
10 unless the parties otherwise agree or unless for good cause
11 shown the court determines that additional time is required.
12 Notice as the court directs shall be given to the public
13 guardian and his attorney of record, if any, and to any other
14 parties named defendant in the petition.

15 (j) On petition of the public guardian, the court in its
16 discretion may for good cause shown transfer guardianship to
17 the State guardian.

18 (k) No later than January 31 of each year, the public
19 guardian shall file an annual report with the clerk of the
20 Circuit Court, indicating, with respect to the period covered
21 by the report, the number of cases which he has handled, the
22 date on which each case was assigned, the date of termination
23 of each case which has been closed during the period, the
24 disposition of each terminated case, and the total amount of
25 fees collected during the period from each ward.

26 (1) (Blank).

1 (Source: P.A. 96-752, eff. 1-1-10.)

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Statutes amended in order of appearance

- 20 ILCS 3955/31 from Ch. 91 1/2, par. 731
- 20 ILCS 3955/32 from Ch. 91 1/2, par. 732
- 705 ILCS 105/27.3f new
- 755 ILCS 5/11a-12 from Ch. 110 1/2, par. 11a-12
- 755 ILCS 5/13-1 from Ch. 110 1/2, par. 13-1
- 755 ILCS 5/13-1.3 new
- 755 ILCS 5/13-5 from Ch. 110 1/2, par. 13-5